

Resolution No.: 12-1844
Introduced: October 25, 1994
Adopted: October 25, 1994

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
WITHIN MONTGOMERY COUNTY, MARYLAND

By: District Council

Subject: Application No. G-710 (Clarksburg Sectional Map Amendment) for Amendment to the Zoning Map, County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located within Montgomery County, Opinion and Resolution on Application

OPINION

This Sectional Map Amendment (G-710) was filed by the Maryland-National Capital Park and Planning Commission and is a comprehensive rezoning application for purposes of implementing the zoning recommendations contained in the Approved and Adopted Clarksburg Master Plan and Hyattstown Special Study Area. The total area which is the subject of this application consists of approximately 10,700 acres. Approximately 7,970 acres are proposed for rezoning. The remaining 2,730 acres are proposed for reaffirmation of existing zoning.

The Clarksburg Master Plan and Hyattstown Special Study Area was approved by the Montgomery County Council on May 23, 1994. The Master Plan sets forth the specific land use and zoning objectives for the development of the Clarksburg Master Plan and Hyattstown Special Study Area and has been subject to extensive and detailed review by the District Council. Following the transmittal of the Clarksburg Master Plan and Hyattstown Special Study Area, the Montgomery County Council held public hearings on September 9 and 21, 1993, wherein testimony was received from interested parties regarding the Clarksburg Master Plan and Hyattstown Special Study Area. Worksessions were held by the County Council's Planning, Housing and Economic Development Committee on October 4 and 18, 1993, November 8 and 29, 1993, December 6 and 13, 1993, January 31, 1994, February 1, 7, 14, 22, and 28, 1994, March 11, 14, and 25, 1994, and April 21, 22, and 26, 1994, and by the County Council on April 5, 11, 12, 14, 15, 19, and 26, 1994, at which times detailed consideration was given to the public hearing testimony and the comments and recommendations of the County Executive, Montgomery County Planning Board, and interested parties.

The County Council accepted the Plan's overall development concept of concentrating development around a transit oriented Town Center District and Transit Corridor District to be located east of I-270. The Council also accepted each of the Plan's ten key policies with the changes summarized below. The Council believed that Plan's goal of protecting Ten Mile Creek needed to be balanced with other County goals for economic development (particularly along the I-270 corridor) and additional housing, and that in the Council's judgment some additional development was justified. In particular, the Council added sites for employment uses along I-270 and some additional housing in the Ten Mile Creek Area. In accordance with these overall land use and development concepts, zoning changes were identified to carry out the Master Plan's development objectives.

The Approved and Adopted Clarksburg Master Plan and Hyattstown Special Study Area includes a plan for the staging of development based on various planning, fiscal, and environmental objectives. While this staging plan does not impact the amount or type of development that would be allowed under any zone, it significantly impacts the timing of development and means that a sizable portion of the Planning Area will not be able to develop until certain circumstances occur. To fully understand the opportunities and limitations on development in Clarksburg the Sectional Map Amendment (SMA) must be considered in conjunction with the Master Plan.

Sectional Map Amendment G-710 was filed on July 21, 1994, by the Montgomery County Planning Board to implement the specific zoning recommendations of the Clarksburg Master Plan and Hyattstown Special Study Area. The Council held public hearings on September 20 and 21, 1994 wherein testimony was received from interested and affected parties regarding zoning classifications as proposed by the Sectional Map Amendment. Following the September 27, 1994 closing of the public record, the County Council held worksessions on October 3, 11 and 18, 1994 at which times detailed consideration was given to the evidence of record.

In general, the evidence of record compiled in connection with the Clarksburg Sectional Map Amendment consists of all written material in connection with the planning effort through the 1994 Approved and Adopted Clarksburg Master Plan and Hyattstown Special Study Area. This information is incorporated into the public record by reference and provides the basis and rationale for the proposed comprehensive rezoning of the planning area. The evidence of record also consists of all written material submitted in connection with the Sectional Map Amendment, including the transcript of the September 20 and 21, 1994 public hearing and letters received through the September 27, 1994 public hearing record closing.

The Committee and Council discussed at its worksessions the major issues that had been raised in connection with Sectional Map Amendment G-710. Each of these issues was carefully reviewed by the Council. Specific attention was given to the requests described below.

General Environmental Issues

The Council discussed many of the comments received regarding the environmental impacts of the Master Plan and SMA. The Council did not believe that any new information was presented since the Master Plan discussions that would justify reconsideration of the Master Plan.

The Council discussed the environmental constraints during its review of the Master Plan at length and a majority of the Council believed that County goals related to development of the I-270 corridor and the need for additional housing outweighed the additional environmental risks of the land uses approved by the Council. The Council Resolution approving the Master Plan changed the environmental strategy from one of prevention of degradation through low density zoning to one of mitigation through best management practices.

Ridge Road Transition Area

The Council discussed 2 properties in the Ridge Road Transition Area: the Schaeffer Farm (SMA Index #36) and the Tregoning/Piedmont property (SMA Index #s 38, 39, 40, and 41). Both property owners asked to retain the existing R-200 zoning or, alternatively, the owners of the Tregoning/Piedmont property asked for RE-1/TDR-2. The Council discussed the fact that these properties were discussed at length during the master plan process and that no new information was presented to lead the Council to reconsider this issue.

Cabin Branch Neighborhood

The Council considered the request of the property owners of the Clarksburg Triangle property that the base zoning on the northeastern portion of their property be I-3 instead of RMX-1/TDR (SMA Index #19). Upon reviewing the Master Plan recommendations for this site and after discussion with the Board and Staff of the Planning Board, the Council determined that the RMX-1/TDR zoning recommended in the Master Plan was in fact the best way to accomplish the Plan's goals of achieving mixed use development that would be integrated with the remaining portion of the Cabin Branch Neighborhood. The Council confirmed its intent to have one or more signature employment sites develop along the portion of the site that fronts on I-270, but believed that the best means of accomplishing the Plan's varied goals on this site would be through an MXPD application and that RMX-1/TDR zoning would be more likely to encourage an MXPD application than I-3 zoning.

The Council also agreed with the recommendation of Planning Staff to add an additional 28 acres to the I-3 zone so that the zoning will better conform to property lines.

Town Center Area

The Council considered the testimony from the owner of the Frickx Property located inside, but at the edge of, the historic district and bordering on the RMX zoned land in the Town Center. (Note that properties not recommended for a change in zoning do not have an index number.) The Council rejected the owner's request for RMX-2 or C-1 based on the Council's concerns regarding the potential impact on the Clarksburg Historic District, but noted that this property may be appropriate for commercial development if it could be accomplished in a manner that would be compatible with the historic district designation. The Council believed that this property may be appropriate for commercial uses either through a special exception (e.g., a home occupation or professional office may be appropriate for this site) or through the application of the new overlay zone currently being explored by Planning Staff. This overlay zone is proposed to allow a mix of residential and commercial uses in historic districts and should be considered for this area.

The Council considered the testimony from a representative of the Clarksburg Venture Associates requesting that a 3-4 acre portion of their property be zoned RMX-2 instead of R-200 zoning as recommended in the SMA. The Council discussed this property during the Master Plan process and determined that the entire property (approximately 45 acres) should be R-200 and that the owner should be able to cluster development south of Mid-County Highway (A-305) and maintain low densities north of Mid-County Highway. Planning Staff indicated that due to the changes in the alignment of the highway that the entire property will be north of Mid-County Highway. Based on this information the Council did not see any reason to deviate from the Master Plan and SMA recommended zoning.

The Council considered testimony received on behalf of the Funt property stating that the shift of the right-of-way for Mid-County Highway bisected the property and led to the rezoning of the northern portion of the property as R-200 in contrast to the Master Plan recommendation for this property (SMA Index #26). The Council concurred with the Planning Staff recommendation that the entire property should be zoned RMX since it is an important element in the mixed use concept for the Town Center and RMX zoning would be consistent with the Master Plan.

Transit Corridor District

The Council considered testimony received on behalf of residents of Clarksbrooke Estates Neighborhood, located east of MD 355 in the Transit Corridor. The Council supported the request of the residents to change the zoning on the area adjacent to Clarksbrooke Estates from R-200/TDR-3 to R-200 (portion of SMA Index #35). The Council noted that there is an approved subdivision plan for this area with lots either at or larger than R-200 standards. The Council supported using the property lines of the new subdivision as a zoning boundary rather than the stream.

The Council considered the base zoning for three properties in the transit corridor recommended for PD floating zones in the Master Plan (in the range of 7-11 units per acre). The base zoning was not discussed during the Master Plan review, therefore the SMA retained the existing I-3 zoning as the base zone. The Council discussed the fact that an I-3 base zone may not provide adequate incentive for the property owner to pursue the PD floating zone option and concurred with the Planning Board's recommendation to change the base zoning on the Comsat and Board of Education properties to R-200. The Council also decided to maintain the existing I-3 zoning on the Moyer property so as not to make this property a nonconforming use.

The Council considered testimony from the owner of the 42-acre Totah property requesting that the R-200/TDR zoning for this property be changed to accommodate a PD floating zone designation (SMA Index #30). The Council denied this request, noting that it would be inconsistent with the Master Plan and that a recommendation for a PD floating zone designation could only be made in a master plan and not at the time of SMA. The Council noted this the property would no longer be bisected by the transitway based on changes in alignment made by the Council and that the property was recommended exclusively for residential development, making it in these two respects different from the other properties recommended for PD zoning. The Council noted that up to 205 TDRs would be required to fully develop this site.

The Council also agreed to a technical change recommended by Planning Staff for the Totah property. A portion of the Totah property was inadvertently zoned R-200 when it should have been zoned R-200/TDR. The Council and Planning Board supported the technical correction.

Hyattstown Special Area

The Council considered testimony received from the owner of the Comus Industrial Site requesting that the Council retain the I-3 zoning on this property (SMA Index #8). The Master Plan recommends RDT zoning for this site based on the Council's concerns regarding the infrastructure needs that would be generated by industrial development and the impact on the environment. As the Master Plan notes, this site does not have access to I-270, no community sewer or water is planned, and Comus Lane is a planned two-lane road with a bridge over I-270 that will have limited carrying capacity. The Council also expressed concerns over the impact of additional traffic on MD 355 as well as on the Clarksburg and Hyattstown Historic Districts. The Council concluded that no new information was presented in the SMA testimony that would lead the Council to reverse the Master Plans' recommendations for this site.

The Council considered testimony objecting to any residential development in the Hyattstown Transition Area (SMA Index #5). The Master Plan recommends a base density of RE-2 with an option for PD-2 only if the County fails to implement the CIP project to provide community water and sewer to Hyattstown. The Council did not find that any new information was presented that would lead them to contradict the Master Plan recommendations for this property.

The Council supported the Master Plan recommendation for the creation of a new rural service zone to address the unique situation in the portion of the Hyattstown Transition Area north of the area zoned I-1 (SMA Index #6). The Council approved a new Rural Service zone and received letters from each of property owners asking that the zone be approved at the time of the SMA. The Council and Planning Board agreed to this request.

The Council considered a 1-acre parcel owned by the Parks Department in Little Bennett Regional Park that is recommended to be rezoned from I-1 to RDT to conform with the zoning for the rest of the Park (SMA Index #7). The Council rejected a request made on behalf of the lessee of this property to maintain the I-1 zoning since it is contrary to the Master Plan and to the wishes of the property owner.

The Council considered an SMA mapping error on the Miller property where a small area at the northwest corner of sheet 234 NW 14 failed to show the RE-2 designation (SMA Index #5). The Council and Planning Board concurred with the need to make this adjustment.

The Council considered the Levin property located adjacent to and east of Hyattstown and the SMA mapping error that zoned this property RDT instead of Rural zoning. The Council agreed that the error should be corrected and the property should be zoned Rural.

Ten Mile Creek

The Council discussed the testimony received regarding the zoning recommendations for the Ten Mile Creek Area. The Council received extensive testimony relating to the recommendation for RE-1/TDR-2 zoning (SMA Index #s 15 and 16). The Council considered the comments of individuals and groups opposed to this zoning based on their concerns regarding the potential impact on the environment and determined that no new information was presented that would lead them to reconsider the Master Plan recommendations.

The Council reviewed a letter from WSSC on sewerage associated with the Master Plan's recommended levels of development for Ten Mile Creek and determined that this letter did not provide any information different from information considered by the Council during the master plan process and did not feel that any action was necessary in response to the letter.

The Council considered testimony received on behalf of the Lavine Property requesting that the amount of land recommended for I-3 zoning be increased from 50 to 58 acres. The Council noted that the amount of acreage discussed during the Master Plan worksessions was 58 acres and agreed to increase the amount of land recommended for I-3 zoning to conform with the Master Plan intent.

The Council considered testimony received from the Boyds Civic Association objecting to the RE-1/TDR zoning for the area south of West Old Baltimore Road (SMA Index #22). The Council did not believe that any information was presented that would lead them to contradict the Master Plan recommendations for this property.

The Council considered testimony from the Boyds Civic Association and residents of Boyds concerning the impact of the SMA on their Planning Area. The Council noted that the SMA would not make any zoning changes in the Boyds Planning Area (the only changes to the Boyds Master Plan were the width of MD 121 and the location of the greenways) and rejected their request that approval of the SMA be conditioned on the display of the boundary between the Clarksburg Planning Area and the Boyds Planning Area on the SMA. (The Council noted that the index included at the beginning of the SMA shows the Planning Area Boundaries, but the individual pages of the SMA only show zoning and property lines to minimize the number of extraneous lines shown.)

The Council considered at length the testimony of property owners who objected to the downzoning of properties west of Ten Mile Creek from R-200 to RDT (SMA Index #9). The Council considered a memorandum from Council Staff that summarized and responded to each of the major points raised in the testimony. After considering these points, the Council indicated that they did not concur with the arguments presented by the property owner and continued to support the RDT zoning recommended in the Master Plan. Among the issues considered by the Council and described in more detail in the staff memorandum for the Council's worksession are: whether previous plans indicated an intent that this particular area be developed; whether this zoning was consistent with the Functional Master Plan for Preservation of Agriculture and Rural Open Space ("The Agriculture Plan"); whether the Council in any way discriminated against these properties; whether this property is suitable for farming; whether the property would have any economically viable use after the downzoning; whether the Slidell/Shiloh Church property is recommended for a zoning vastly different from its neighbors; whether the Slidell/Shiloh property has the same characteristics and factors as the Northern 121 Corridor property; whether the County provided a sufficient rationale why the zoning boundary for RDT zoning should be shifted from Slidell Road to Shiloh Church Road and why residential development is inappropriate for this area; whether it is appropriate to have this property serve as a transition to other farmland; how the various stream classifications should impact proposed levels of development; whether farming will have a more negative environmental impact on Ten Mile Creek than low density residential development; whether RDT zoning would reduce potential transit ridership; whether RDT zoning would deprive the County of single-family homes; whether RDT zoning would make efficient use of existing and nearby infrastructure; whether there is more farmland zoned for agriculture than is being farmed in the County; whether the zoning is providing more RDT land than recommended in the Agriculture Plan; and whether Agriculture is a viable industry that should be promoted by the Council.

The Council considered testimony received from the owner of the 81 acre Rable property objecting to the downzoning of this property from R-200 to RDT (SMA Index #9). The Council believed that the zoning for this property should be consistent with the surrounding RDT zoning and did not find any reason to change the Master Plan recommended zoning.

Miscellaneous Issues

The property indicated as C-25 in the SMA is part of the Germantown Planning Area and due to a mapping error was inadvertently changed from the R-30 zone to the R-200 zone. The Council agreed with the recommendation of Planning Staff that this property should be removed from the SMA.

The Council concurred with Planning Staff's recommendation to clarify that the Master Plan cap on the number of units in the portion of Ten Mile Creek recommended for RE-1/TDR-2 zoning (SMA Index #s 15 and 16) should apply only to that property known as the Northern 121 Corridor property. While this is not an SMA issue per se, the RE-1/TDR zoning of miscellaneous other parcels in the Ten Mile Creek Area led to some confusion regarding the application of the cap.

The Council considered testimony from an individual asking the Council to amend the RDT zone to allow for some clustering of development without increasing the allowable density. The Council noted that this is not an SMA issue but that this issue could be explored in conjunction with the broader study of the TDR program requested by the Council.

The Council indicates in granting this application that all existing zoning designations are reaffirmed for those properties not reclassified by this application and they are part of the comprehensive rezoning action.

For these reasons and because to grant this application will aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, this application will be GRANTED.

ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following resolution:

Application No. G-710, Maryland-National Capital Park and Planning Commission, Applicant, for the Sectional Map Amendment covering the area of the Clarksburg Master Plan and Hyattstown Special Study Area, consisting of approximately 10,700 acres, more or less, is GRANTED as set forth below.

<u>INDEX #</u>	<u>EXISTING ZONE CLASSIFICATION</u>	<u>RECLASSIFIED TO</u>	<u>AREA IN ACRES</u>
HYATTSTOWN SPECIAL STUDY AREA			
1	R-200	C-1	1.10
2	C-1	R-200	0.61
3	R-200	Rural	1.64
4	RDT	Rural	85.00*
5	RDT	RE-2	219.90
6a	RDT	Rural	12.30*
6b	RDT	Rural Service	74.30*
6c	Country Inn	Rural Service	3.50*
7	I-1	RDT	1.00
8	I-3	RDT	158.61
TEN MILE CREEK AREA			
9	R-200	RDT	1813.06
10	RE-2	RDT	0.43
11	R-200	Rural	580.34
12	I-3	Rural	221.32
13	R-200	I-3	1.96
14	R-200	I-3	21.90*
15	R-200	RE-1/TDR	597.90*
16	I-3	RE-1/TDR	30.22*
17	R-200	RE-2	140.71
18	R-200	RE-1	120.55
CABIN BRANCH NEIGHBORHOOD			
19	R-200	RMX-1/TDR	438.47
20	R-200	I-3	118.96*
21	R-200	RE-1	39.44
22	R-200	RE-1/TDR	169.27
23	R-200	RE-2	700.53
TOWN CENTER DISTRICT			
24	R-200	RMX-2	50.40*
25	C-2	RMX-2	11.80
26	R-200	RMX-2	210.79
27	R-30	RMX-2	5.76
28	C-1	RMX-2	4.26
29	R-200	RMX-2	5.36
TRANSIT CORRIDOR DISTRICT			
30a	R-200	R-200/TDR	44.63*
30b	I-3	R-200	42.90*

*Changed from original SMA application based on Council action.

BRINK ROAD TRANSITION AREA

31	R-200	I-4	80.63
32	R-200	R-200/TDR	177.45
33	R-200	RE-2	126.42

NEWCUT ROAD NEIGHBORHOOD

34	PNZ	R-200	391.95
35	R-200	R-200/TDR	606.50*

RIDGE ROAD TRANSITION AREA

36	R-200	RC	406.83
37	R-200	RE-1	95.45
38	R-200	RC	110.76
39	R-200	RE-1	41.83
40	Rural	RC	3.82
41	Rural	RE-1	6.48

TECHNICAL CHANGES TO PROVIDE BASE MAP COMPATIBILITY

INDEX # ACREAGE COMMENTS

HYATTSTOWN SPECIAL STUDY AREA

C-1	0.16	Additional C-1 zoning due to road right-of-way location.
C-2	0.27	Additional C-1 zoning due to road right-of-way location.
C-3	0.064	Change from RDT to R-200 due to adjusted lot lines.
C-4	0.5	Additional C-1 zoning due to road right-of-way location.
C-5	0.36	Additional C-Inn zoning due to road right-of-way location.

TEN MILE CREEK AREA

C-6	3.9	Change from R-200 to RDT Zone due to adjusted lot lines.
C-7	1.16	Change from R-200 to RDT Zone due to adjusted lot lines.
C-8	1.57	Correct I-3 zoning to reflect road right-of-way.

TOWN CENTER DISTRICT

C-9	2.36	Additional R-200 zoning due to adjusted lot lines.
C-10	3.14	Additional R-200 zoning due to adjusted lot lines.
C-11	0.42	Additional C-2 zoning due to road right-of-way location.
C-12	0.92	Additional C-1 zoning due to road right-of-way location.
C-13	0.04	Additional C-1 zoning due to adjusted lot lines.
C-14	0.71	Additional R-200 zoning due to adjusted lot lines.

*Changed from original SMA application based on Council action.

TRANSIT CORRIDOR DISTRICT

C-15 5.30 Additional I-3 zoning due to road right-of-way.

RIDGE ROAD TRANSITION AREA

C-16 4.40 Additional R-C zoning due to adjusted lot lines.
C-17 2.70 Change from PNZ to R-200 Zone due to adjusted lot lines.
C-18 0.04 Additional C-1 zoning due to road right-of-way.
C-19 0.09 Additional C-1 zoning due to road right-of-way.
C-20 1.07 Change from R-200 to RC Zone due to adjusted lot lines.
C-21 2.60 Additional R-200 zoning due to adjusted lot lines.

NEWCUT ROAD NEIGHBORHOOD

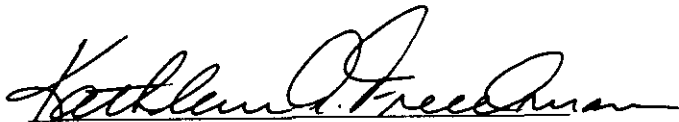
C-22 0.16 Change from PNZ to R-200 due to adjusted lot lines.
C-23 0.69 Change from PNZ to R-200 due to adjusted lot lines.

BRINK ROAD TRANSITION AREA

C-24 0.43 Additional I-3 zoning due to adjusted lot lines.
C-25 Removed from SMA based on Council action.

The remaining 2,730 acres subject of the Sectional Map Amendment Application are reconfirmed in existing zoning.

This is a correct copy of Council action.


Kathleen A. Freedman, CMC
Secretary of the Council